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REFORM OF THE PROCEDURE FOR SELECTING JUDGES OF CONSTITUTIONAL COURTS AND JUDICIAL DIALOGUE: EUROPEAN EXPERIENCE

REFORMA DO PROCEDIMENTO DE SELEÇÃO DE JUÍZES DE TRIBUNAIS CONSTITUCIONAIS E DIÁLOGO JUDICIAL: EXPERIÊNCIA EUROPEIA

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Abstract: Given the transformations that have taken place in recent years, the processes of enlargement and the need to respond to the accelerating process of globalisation, it is doubtful that states can continue to think, as they have done in the past, of maintaining a supranational structure that strengthens their power in the domestic sphere and allows them to remain important agents in the integration process. The tension between constitutionalism and Europeanism may disappear in the medium term if Europe is to continue to maintain its level of development and prosperity in the global context. The main function of constitutional courts is to ensure the constitutional order. This guarantee of the Constitution, of which they are the main interpreter, is in principle neutral with regard to the European integration process. The link between constitutional justice and the Constitution means that the process of European integration can only be judged under the conditions laid down by the Constitution itself and in accordance with the general characteristics of the national constitutional order. It is not the same, for example, that the Constitution does not contain specific provisions on the process (as is the case in Spain), other than a general authorisation for accession, and that, on the contrary, the Constitution sets conditions and limits (as is the case in Germany). It is also not the same that, for example, the Constitution sets limits to its reform through immateriality provisions (as is the case in Italy or Germany), nor that it does not explicitly provide for such limits. Constitutional courts play an important role in the realisation of the necessary minimum of rights, i.e. in creating an existential core that ensures security, legitimacy and constitutional protection outside the state. This is not an attempt to standardise rights, let alone to promote standardised judicial decisions, but to unify and condense their constitutional protection. Faced with the vulnerability of fundamental rights in global constitutionalism, constitutional courts are increasingly engaged in a kind of communicative integration process in which legal rationalities are exchanged through the exchange of decisions, which is called international judicial dialogue in the strict sense. This book not only demonstrates that the conversation between constitutional courts has a specific structure, methodology and assumptions, but also proposes a reasonable procedure for systematising and operationalising the

incorporation of international jurisprudence into domestic constitutional responses to the legal paradoxes of our time: the process of judicial dialogism.

Keywords: Constitutional justice. Competitive selection. Judges. Constitutional courts. Judicial dialogue.

Resumo: Dadas as transformações ocorridas nos últimos anos, os processos de ampliação e a necessidade de responder ao processo acelerado de globalização, é duvidoso que os Estados possam continuar pensando, como fizeram no passado, em manter uma estrutura supranacional que fortaleça seu poder na esfera doméstica e lhes permita continuar sendo agentes importantes no processo de integração. A tensão entre o constitucionalismo e o europeísmo pode desaparecer em médio prazo se a Europa continuar a manter seu nível de desenvolvimento e prosperidade no contexto global. A principal função dos tribunais constitucionais é garantir a ordem constitucional. Essa garantia da Constituição, da qual eles são os principais intérpretes, é, em princípio, neutra com relação ao processo de integração europeia. A ligação entre a justiça constitucional e a Constituição significa que o processo de integração europeia só pode ser julgado sob as condições estabelecidas pela própria Constituição e de acordo com as características gerais da ordem constitucional nacional. Não é a mesma coisa, por exemplo, que a Constituição não contenha disposições específicas sobre o processo (como é o caso da Espanha), além de uma autorização geral para a adesão, e que, ao contrário, a Constituição estabeleça condições e limites (como é o caso da Alemanha). Também não é o mesmo que, por exemplo, a Constituição estabeleça limites para sua reforma por meio de uma autorização imaterial. Também não é o mesmo que, por exemplo, a Constituição estabeleça limites à sua reforma por meio de disposições de imaterialidade (como é o caso da Itália ou da Alemanha), nem que não preveja explicitamente tais limites. Os tribunais constitucionais desempenham um papel importante na realização do mínimo necessário de direitos, ou seja, na criação de um núcleo existencial que garanta segurança, legitimidade e proteção constitucional fora do Estado. Não se trata de uma tentativa de padronizar os direitos, muito menos de promover decisões judiciais padronizadas, mas de unificar e condensar sua proteção constitucional. Diante da vulnerabilidade dos direitos fundamentais no constitucionalismo global, os tribunais constitucionais estão cada vez mais engajados em uma espécie de processo de integração comunicativa em que racionalidades jurídicas são trocadas por meio do intercâmbio de decisões, o que é chamado de diálogo judicial internacional em sentido estrito. Este livro não apenas demonstra que a conversa entre cortes constitucionais tem uma estrutura, uma metodologia e pressupostos específicos, mas também propõe um procedimento razoável para sistematizar e operacionalizar a incorporação da jurisprudência internacional nas respostas constitucionais domésticas aos paradoxos jurídicos de nosso tempo: o processo de dialogismo judicial.

Palavras-chave: Justiça constitucional. Seleção competitiva. Juízes. Tribunais constitucionais. Diálogo judicial.

JEL Classification: K1, K10

1. INTRODUCTION

The relationship between constitutional justice and the process of European integration naturally leads us to the main challenges facing the integration process today. This is due to the fact that constitutional courts perform their functions in relation to the body of laws that they are supposed to interpret and apply. For this reason, the relationship between the European legal order and national legal systems is articulated in its main elements by the relationship between the Court of Justice of the EU and national constitutional courts. Courts certainly do not take a passive role in this important function, but there is no doubt that the composition of each legal system and its relationships are also elements that determine the way courts operate and the way they can manage their activities. The relationship between the courts and the integration process, therefore, in fact appeals to a universe of concerns that go beyond, condition and transcend mere judicial activity.

According to the European Charter on the Status of Judges[1], approved on 10 July 1998, the guarantees of competence, independence and impartiality of judges, which every person legitimately expects when applying to the courts for the protection of his or her rights, should be set out in an official document intended for all European states. Among the requirements in the Charter, it should be noted that the selection of candidates for the position of judge should be based on their ability to freely and impartially assess the legal issues to be considered and apply the law to them without losing their own dignity.

When deciding how to select judges of constitutional courts, a number of factors should be taken into account. It is determined that in the world constitutional practice there are three main methods of selection: appointment, competitive selection and election. Each of these methods provides for certain criteria that a candidate for the position of a constitutional court judge must meet, such as age, nationality, recognition in the field of law, and previous legal experience, in order to be considered qualified. In addition, collective criteria may be introduced.

[1] European Charter on the Status of Judges. Lisbon, 10 July 1998. URL: https://court.gov.ua/userfiles/05.pdf

2. Competitive procedure for the selection of judges

2.1. International standards, principles and recommendations

The constitutional integration of Europe is largely based on national constitutional rights and will continue to do so in the future through the use of common constitutional traditions[2]. This is reflected in the current Article 6(2) of the TEU[3] and, more importantly, this is also reflected in the Constitutional Treaty. The Constitutional Treaty not only uses national constitutional law as a mechanism for integrating rights-related norms (Article 112(4)[4], but also makes a general reference to the constitutional law of the Member States in order to integrate the European constitutional order (Article 9(3))[5]]. This link is unique in the context of relations between legal systems and means that constitutional courts will continue to play an important role in the process of constitution-building in Europe as shapers of common principles and traditions.

The right direction of the integration process, aimed at moving towards building a legal order characterised by features that contribute to the viability of the principle of legal certainty: unity, consistency and completeness, is the convergence of the terms "constitutional" and "European". This applies to both European and national legal systems. The European legal order should be more constitutional, and domestic constitutional systems should be more European. Both are not easy to achieve. The first - the constitutionalisation of the European order - is difficult because there is a great deal of social, political and doctrinal resistance. At the heart of this resistance is the fear of the constitution of a future European federal state; hence the idea that if there ever is a European constitution, it will be outside the framework of a state - even a federal - constitution.

One of the great French thinkers of the Enlightenment, Montesquieu, wrote in the early eighteenth century that the legislator "had to write with a trembling hand". By this, he meant that the development of rules that were to regulate social relations should be the

[2] A. Rodríguez, «¿Quién debe ser el defensor de la Constitución española? Comentario a la DTC 1/2004, de 13 de diciembre», Revista de Derecho Constitucional Europeo, nº 3, Enero-Junio de 2005. Dirección electrónica: http://www.ugr.es/~redce/.

[3] The Union will respect fundamental rights as guaranteed in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and as they result from the constitutional traditions common to the States. members as general principles of Community law.

[4] To the extent that this Charter recognizes fundamental rights resulting from the constitutional traditions common to the Member States, these rights shall be interpreted in harmony with those traditions.

[5] The fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and those that are the result of the constitutional traditions common to the Member States form part of Union Law as general principles.

result of long deliberation. The "trembling hand" should be imposed on the constitutional judge, who has the power, even more significant, to invalidate the work of the representatives of the people without appeal.

Article 6 of the ECHR not only protects the independence and impartiality of judges, but also requires a system of judicial appointment that excludes arbitrary appointment[6]. From this point of view, it is an indisputable principle that the selection and career of judges should be based on objective criteria, previously established by law or by the competent authorities. The criteria should be based on merit, taking into account the qualifications, skills and abilities required to adjudicate cases applying the law[7], the integrity and competence of judges are considered to be the best guarantees of their independence. Substantive and procedural rules should also be established and published[8].

Selection should be done in a way that does not discriminate against candidates[9]. The decision on the selection (and evaluation) of judges should be free from considerations beyond their professional competence. A candidate's disability, if it does not affect the candidate's ability to perform the duties of a judge, should not be considered an obstacle[10]. On the other hand, the requirement for candidates to be citizens of a particular state has existed for a long time and is not considered discriminatory[11], but deviations from this principle are possible in the case of small states where it may not be possible to fill judicial positions exclusively from their own citizens[12]. Proficiency in the state language is a legal requirement for a candidate and is therefore considered as a "valid reason for

[6] CDL-AD(2018)028, Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement of Malta, §30.
[7] CM/Rec(2010)12, para. 44. See CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges, §27; CDL-AD(2018)028, Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement of Malta, §43.
[8] CDL-AD(2012)001, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, §§57 and 58.
[9] A non-exhaustive list of grounds for discrimination contained in the recommendation provides that: sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, proprietary status, disability, birth, sexual orientation or other status. CM/Rec(2010)12, para. 45.
[10] 3 Explanatory memorandum to CM/Rec(2010)12, para 50. The standard, where a candidate could be refused on the grounds of disability such as 'unusual difficulties of speaking of controlling movement of organs that may be regarded as odd by other people' was regarded as inappropriate test by the Venice Commission. It was regarded too broad and the test of ‚appearing odd to other people' and inobjective one. See CDL-AD(2011)004, Opinion on the Draft Law on Judges and Prosecutors of Turkey, §31
[11] CM/Rec(2010)12, para. 45
[12] CDL-AD(2013)018, Opinion on the balance of powers in the Constitution and the Legislation of the Principality of Monaco, §86.

criminalisation"[13]. A law degree is considered to be a proportionate requirement for candidates.

As is clear, in almost every country, the selection of judges is concentrated in the parliament with a greater or lesser degree of parliamentary involvement. Now, in this part of the document, it is necessary to look specifically at the quorum required in each parliament for the election of judges/candidates for the Constitutional Court. With regard to the quorum required for the election of a judge/candidate for the position of a judge of the Constitutional Court, in most countries, a higher number of votes of MPs than a simple majority prevails. The most commonly used qualified majority is either two-thirds of the members present or three-fifths of the members present in eight countries (Belgium, Croatia, France, Hungary, Germany, Italy, Spain, Slovakia, Portugal), followed by an absolute majority, or in other words, a majority of votes in four countries (Austria, Latvia, Romania and Slovenia) and, finally, a simple majority, respectively. majority of more than half of the members present in four countries (Bulgaria, Czech Republic, Lithuania, Poland)[14].

2.2. European experience in regulating the selection of constitutional court judges

Rules for the appointment of judges can be formulated to ensure an ongoing dialogue between the constitutional court and other political actors on constitutional interpretation, for example by inviting nominations from the executive or parliamentary appointment of judges to ensure that the constitutional court remains a reflection of the wider society. Such rules should be formulated very carefully to "ensure that the democratic legitimacy of the judiciary is maintained without introducing a form of politicisation that reduces the quality of appointed judges and turns judges into politicians"[15].

The question of the method of appointment of members of the Constitutional Council can be legitimately raised by taking up four classic criticisms, as recalled by Dean

[13] CDL-AD(2013)034, Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine, §38
[14] Simona Farkašová. Constitutional aspects of the current reform of the selecting constitutional judges in the Slovak Republic and the comparative perspectives in Europe. Juridical Tribune Volume 11, Issue 2, June 2021 p.150-173
[15] Malleson, K., 'Introduction', in K. Malleson and P. H. Russell (eds), Appointing Judges in an Age of Judicial Power: Critical Perspectives from Around the World (Toronto/Buffalo, NY/London: University of Toronto Press, 2006) 6.

Wedel[16]. Firstly, it is the complete freedom of the appointing authorities to choose the persons. There are no requirements for experience, legal competence or age limits. The criticism is well known: this freedom of choice reinforces the political nature of the institution, allowing people close to the President of the Republic and the heads of the assemblies to be appointed for their political loyalty rather than for the qualities required to perform future functions. The proposed remedies are varied: election by parliament, as was practised for the 1946 Constitutional Committee, or as a dream of a hypothetical future republic (Bastien François, Arnaud Montebourg, Olivier Duhamel); appointment by other authorities: The Council of State, the Court of Cassation, the Court of Audit, etc.; and defining the "profile" of an experienced lawyer.

The only requirement that makes sense is to specify that the appointees should hold positions in the political, legal, judicial or administrative spheres, bearing in mind that knowledge of public affairs is a necessary element in the exercise of one of the functions of regulating public authority and law. Here, inspiration should be drawn from the requirements for judges of other constitutional courts[17]. In this way, we avoid naming, on a whim or on the spur of the moment, individuals who are certainly recognised and valuable (in the media, sports, artistic, "great conscience"...), suddenly in love with human rights. In this delicate area of appointments, which leads to a change in the balance within the Council, the arrival of a candidate would have the effect of a leaf blowing in the wind... Reason must one day prevail on this issue and escape the grip of the prevailing demagoguery[18].

In order to ensure consistency and stability in the composition of the Constitutional Council, it seems necessary to remove the provision in Article 56 of the Constitution that "in addition to the nine members..., former Presidents of the Republic are automatically members of the Constitutional Council for life". This constitutional oddity, which is said to have been introduced in favour of the last president of the Fourth Republic, Rene Coty, is no longer relevant today. A sudden and uncontrolled change of

[16] Georges Vedel, « Réflexions sur les singularités de la procédure devant le Conseil constitutionnel », Nouveaux Juges, Nouveaux Pouvoirs ?, Mélanges en l'honneur de Roger Perrot, Dalloz, 1996, p. 537

[17] For example in Italy, article 135 of the Constitution, paragraph 2: "The judges of the Constitutional Court are chosen from among the magistrates, even retired, belonging to the higher, ordinary and administrative courts, the tenured professors of the universities who teach the subjects legal professionals and lawyers with more than twenty years of professional activity. »

[18] Pascal Jan, « Le Conseil constitutionnel », La Nouvelle Ve République, Pouvoirs, n° 99, 2001, p. 74. Sur les relations de cause à effet entre décision du Conseil constitutionnel et révision constitutionnelle, voir Louis Favoreu, « Le Parlement constituant et le juge constitutionnel », Mélanges Pierre Avril. La République, Montchrestien, 2001, p. 235.

majority in the Council would lead to absolute confusion and unpredictability. Can we seriously imagine that Mr Giscard d'Estaing will come to a meeting to check the constitutional compatibility of the future Community "Constitutional Treaty" that he initiated at the European Convention, which he now chairs? Again, we should avoid mixing genres.

First and foremost, since the existence of effective judicial review designed to ensure compliance with Union law is an integral part of the rule of law, any court called upon to apply or interpret Union law must meet the requirements of effective jurisdictional protection. To this end, judicial independence is of paramount importance. In this sense, judges must be protected from external interference or pressure that could jeopardise their independence. Furthermore, in accordance with the principle of separation of powers that characterises the functioning of a state governed by the rule of law, the independence of the courts must be guaranteed in relation to the legislature and the executive, among other things[19].

Secondly, although Union law does not impose on Member States a clear constitutional model governing the relations between the various public authorities, the Court shows that Member States must still respect, inter alia, the requirements of judicial independence arising from that law. Under these circumstances, the judgments of a constitutional court may be binding on common law courts, provided that national law guarantees the independence of the court in question, especially in relation to the legislature and the executive. Conversely, if national law does not guarantee such independence, Union law is opposed to such national regulation or practice, such a constitutional court cannot provide the effective jurisdictional protection established by this law[20].

Reforming the procedure for appointing judges of the Constitutional Court of Ukraine is necessary not only to bring the Ukrainian model in line with the rules and practices of European systems of selection of judges of constitutional or supreme courts, in particular, Germany, Lithuania, Spain, the United States or Estonia. This is due to the fact that the judges of the Constitutional Court of Ukraine face a significant and unique task of "protecting the Constitution of Ukraine" in the face of possible encroachments on it by

[19] Hotărârea în cauzele conexate C-357/19 Euro Box Promotion şi alţii, C379/19 DNA- Serviciul Teritorial Oradea, C-547/19 Asociaţia « Forumul Judecătorilor din România », C-811/19 FQ şi alţii şi C-840/19 NC URL: https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-12/cp210230ro.pdf

[20] Hotărârea în cauzele conexate C-357/19 Euro Box Promotion şi alţii, C379/19 DNA- Serviciul Teritorial Oradea, C-547/19 Asociaţia « Forumul Judecătorilor din România », C-811/19 FQ şi alţii şi C-840/19 NC URL: https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-12/cp210230ro.pdf

various authorities, including the legislature. Constitutional "justice" cannot be improvised, and the obvious incompetence of judges may be reflected in the decisions of the constitutional jurisdiction body, which should be based on sound reasoning and a common position of the court within the time limits set by law and regulations[21].

In the process of selecting judges to the Constitutional Court of Ukraine, it is important to consider factors such as the independence of the judiciary from the executive and legislature; ensuring that the judiciary is representative and inclusive, especially with regard to gender, status, ethnicity or background; and ensuring that the judges of the Constitutional Court are of sufficient quality and qualifications to exercise their powers. In establishing the constitutional court, it is important to reconcile and balance two potentially opposing needs, namely, the independence of the constitutional jurisdiction from interference by public authorities and ensuring the professional standards and integrity of the judges of the Constitutional Court.

In Denmark, the Administration of Justice Act (Retsplejeloven) §42, stk 3 states that a law degree is required to become a judge in Denmark. Furthermore, according to the Administration of Justice Act §43, the appointment of judges must be made after a general assessment of the qualifications of the applicants, where judicial and personal qualifications are given decisive weight[22]. The Law on the Administration of Justice §43 states that "The appointment of a judge shall be made after an overall assessment of the qualifications of the candidate, with decisive weight given to the judicial and personal qualifications of the candidate. In addition, the broad judicial experience of the candidate shall be taken into account. The need for courts to be composed of judges with different judicial backgrounds and experience should also influence the assessment of the candidate."[23]. Denmark wants judges to be recruited from all branches of the legal profession, such as deputy judges, civil servants, academics and lawyers in private practice. To this end, all judicial positions are widely advertised in relevant professional journals[24]. Until 1999, too many judges were

[21] Щербанюк О.В., Бзова Л.Г. Реформування процедури добору суддів Конституційного Суду України як умова інтеграції до Європейського Союзу: контекстуальні та концептуальні міркування. Право України. 2023. № 7. С. 12-23.
[22] NOU 2020: 11, section 11.5, page 111, https://www.regjeringen.no/contentassets/367acaf16a2941bfaf5e3b1ae7bfe95f/no/pdfs/nou20202020 0011000dddpdfs.pdf
[23] Retsplejeloven §43
[24] Council of Europe, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, page 23, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000 16806c323e

believed to have had career experience in the Ministry of Justice[25]. In addition to the requirement of a law degree, neither Sweden nor Denmark requires a specific exam result or grade to be eligible for appointment as a judge[26].

Kosovo's Constitution provides that proposals for the appointment of judges must be made through an open and merit-based appointment process[27]. Candidates for appointment as a judge in accordance with Article 108 of the Constitution must meet the following general requirements: be a citizen of the Republic of Kosovo; hold a valid university degree in law recognised in Kosovo; pass a bar examination recognised by the applicable law; have a high professional reputation and moral integrity; not have been convicted of a criminal offence, except for a criminal offence committed through negligence; have at least three (3) years of experience in the field of law; and have passed the judicial examination in accordance with the requirements of the Constitution. Experience in the legal field includes, but is not limited to, experience in legal matters in local and international institutions and organisations.

3. Expanding the competence of constitutional jurisdiction bodies as a condition for judicial dialogue between national and international courts

National constitutional courts are direct actors (and not just guests) in the integration process and act as such, generating new impulses that ensure important achievements in the process of constitutionalisation. Thus, in the context of the Lisbon Treaty, domestic constitutional law and integration, two issues are raised: the debate on whether the European Union needs a Constitution and what type of Constitution is appropriate for moving forward in the integration process; and the identification of the structural conditions in which Constitutional Courts operate and the extent to which these conditions can contribute to the progress of the integration process and facilitate conflict

[25] Council of Europe, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, page 23, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168006c323e

[26] Ot. Prp. Nr. 102, section 3.3, page 15, https://www.regjeringen.no/contentassets/2027ea6191c54bbdb5aca090124f660a/nnno/pdfs/otp200820090102000dddpdfs.pdf

[27] Article 108, § 4 of the Constitution. URL: https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION_OF_THE_REPUBLIC_OF_KOSOVO.pdf

resolution at all levels. The author concludes that it is necessary to act on two levels, making national constitutional law more European and European law more constitutional[28].

The relationship between constitutional justice and the process of European integration naturally leads us to the main challenges posed by the integration process today. This is because constitutional courts perform their functions in relation to the legal body they are supposed to interpret and apply. For this reason, the link between the European legal system and national legal systems is articulated, in its basic elements, through the relationship between the Court of Justice of the EU and national constitutional courts. The courts do not play a passive role, as is logical, in the development of this important function, but certainly the conformation of each system and its interrelationships are elements that determine how the courts operate and how they can manage their activities. The relationship between the courts and the integration process thus raises, in fact, a universe of issues that go beyond the mere judicial activity, which both condition and overcome[29].

The search for, or need for, foreign solutions is felt mainly in relation to issues of particular complexity. These issues typically relate to problems of international scope, new and ongoing issues, or at the interface of ethics, economics and politics.

Ten years after the debate, the American constitutionalist Mark Tushnet took up the idea of "dialogical constitutional review" in parallel with his own conception of constitutional justice, especially known in the English-language debate, in favour of "a weak form of constitutional review. In judicial protection of rights, the judge would privilege weak remedies that spare the executive and legislature, leaving them room to act differently to implement rights - a response considered by Peter Hogg and Allison Bushell - rather than final and absolute decisions. However, and herein lies the originality of Mark Tushnet's approach, this voluntary weakness can be accompanied by a certain strength in the interpretation of the content of rights ("strong rights"), i.e., the definition of the duties imposed on public authorities[30]. Each of these two variables, the obligations or the resolution of the conflict associated with their violation, can be strong or weak. The weakening at issue in a constitutional review may relate to one or the other, or both.

[28] Callejón, F. B. (2010). As relações entre o Tribunal de Justiça da UE e os tribunais constitucionais nacionais dos Estados-Membros. Revista Brasileira De Direitos Fundamentais & Justiça, 4(13), 13–36.
[29] Callejón, F. B. (2010). As relações entre o Tribunal de Justiça da UE e os tribunais constitucionais nacionais dos Estados-Membros. Revista Brasileira De Direitos Fundamentais & Justiça, 4(13), 13–36.
[30] Matthieu Febvre-Issaly «Un dialogue constitutionnel? La circulation d'une métaphore et quelques réalités juridiques contemporaines », Jus Politicum, n° 27 URL: http://juspoliticum.com/article/Un-dialogue-constitutionnel-La-circulation-d-une-metaphore-et-quelques-realites-juridiques-contemporaines-1453.html

It is easy to see how these reflections open up possibilities for rethinking constitutional justice. They take a step away from the classical constitutional theory, according to which the constitutional judge interprets constitutional provisions and takes decisive action, such as annulment, to enforce its application. The reorganisation of the desired constitutional review then becomes more of a democratic question, especially when fundamental rights are at stake - and fortiori economic and social rights that put the judge in a difficult position to determine public policy. This is why the theory of proportionality is not enough. It is a way of situating the judge in complex and pluralistic societies.

The metaphor of the dialogue between the judge and the political authorities was reformulated in the Americas in a collective work in Spanish entitled "For Dialogic Justice" and by Argentine lawyer Roberto Gargarella. This collective proposal is based on the debates that took place from its formulation to its revival in the broader and essentially North American English-speaking academic space. First of all, it proposes to read the formulation as a progressive construction of a "conversational" theory of constitutional justice or "dialogical constitutionalism" based on translated texts by Peter Hogg, Mark Tushnet and Rosalind Dixon: it is both a third formulation of the dialogue metaphor and a theoretical outcome, each step detaching the concept from its descriptive inscription in a given legal system[31].

Expand the powers of the Constitutional Council? This is an important question for the overall balance between constitutional review and the Council's place in the constitutional system. The issue is so vast that we can only mention the main topics without pretending to offer clear solutions.

The Constitutional Council is virtually absent from the debate on the relationship between the French legal order and the Community legal order. The review of the compatibility of the Treaties with the Constitution, currently provided for in Article 54 of the Constitution, is a rearguard action in the sense that it always makes the Constitution subordinate to the principles of the Community Treaty. Admittedly, the Council has developed useful case law on national sovereignty and the transfer of powers (1992, Maastricht; 1997, Amsterdam), but there is no real review of the treaties' compliance with the requirements of the French constitutional order in the area of fundamental rights.

[31] Matthieu Febvre-Issaly «Un dialogue constitutionnel? La circulation d'une métaphore et quelques réalités juridiques contemporaines », Jus Politicum, n° 27 URL: http://juspoliticum.com/article/Un-dialogue-constitutionnel-La-circulation-d-une-metaphore-et-quelques-realites-juridiques-contemporaines-1453.html

Preventive control over the compliance of draft and proposed Community acts with the Constitution remains. The unrelenting political will for Community projects could introduce it. If the controversial nature of such projects is declared to be contrary to the Constitution, the French government could raise the issue of a "constitutionality clause" during the Community decision-making process[32]. Such a procedure would undoubtedly be more in line with the logic of the system of checking the constitutionality of acts as it is organised in our country, would undoubtedly be more effective in terms of checking compliance with the Constitution and, finally, would be more respectful of the constitutional requirement to respect national sovereignty.

Appeals against court decisions are not part of our legal culture and would turn the Rada into the Supreme Court, which is not what anyone is asking for. As far as appeals against administrative decisions are concerned, the administrative judge has long proven to be the best defender of freedoms. The only exception that may be permitted concerns litigation over actions in preparation for an election or referendum. Following the decisions of the Council of State and the Constitutional Council in the 2000s (Hauchmaille, Larrouturou, Marini, etc.), it is considered necessary to unify the judicial process of these operations in favour of the Constitutional Council alone, for electoral or referendum operations for which it is currently the a posteriori judge, using the theory of blocks of competences, considering that there is a controversial logic that leads to entrusting the Constitutional Council with all challenges to the ballot, from start to finish. Thus, it would be necessary to abandon the Council's case law, according to which it has recognised "exclusive" competence in these areas, and to grant it in full by enshrining it in Articles 58, 59 and 60 of the Constitution.

The court ruling on the merits should be able to reject questions that are manifestly unfounded, as the Italian judge a quo does. The challenged legal provision must meet two imperative conditions: it must not have already been found to be compliant by the Constitutional Council during the a priori review, and it must dictate the outcome of the dispute, the validity of the procedure or, in criminal cases, the basis of the prosecution, conditions that were already proposed in 1990 during the first attempt to establish such a system. On the other hand, it is believed that the Higher Administrative and Judicial Courts should not be used as a filter to assess the seriousness of a request, risking turning them

[32] See, in this sense, Robert Badinter, interview in Les Quarante Ans de la Fifth République, RDP, 1998, p. 1336. Of course, one can object that this is to bind France's position in the community negotiation in advance, but this would be for the benefit of the legal model that our law conveys. It is well worth another which is too often imposed on us by community texts.

into first instance constitutional judges, competitors of the Constitutional Council and ultimately assessors of the constitutionality of the question of what the responsibility of the Constitutional Council should be. This will only lengthen the time required to resolve court disputes. Thus, any judge should be able to refer constitutional issues directly to the Constitutional Council by deciding to stay proceedings, similar to preliminary questions under Community law: an option for courts whose decisions are subject to judicial review, an obligation for supreme courts.

In a broader sense, the balance of relations with administrative and judicial judges has yet to be found, as evidenced by the controversial episode of the criminal status of the President of the Republic with the decision of the Plenum of the Court of Cassation of 10 October 2001[33]. The Constitutional Council still has no concrete means of imposing its views on ordinary judges, other than the latter's willingness to cooperate. As a result, the effectiveness of constitutionality decisions suffers, even though interpretative reservations addressed directly to ordinary judges should be binding. The autonomy of the courts always takes precedence over the unity of the constitutional order. Should we then introduce a kind of "constitutional rescript", according to which an ordinary judge must refer to the Constitutional Council whenever a question of constitutional interpretation arises? Regardless, there is still a hesitation that is torn between the desire to benefit from a consistent and uniform interpretation of the Constitution and the significant prerogative of the Constitution as the sole interpreter, which would thus be given to the Constitutional Council.

In the practice of the Romanian Constitutional Court, one of the few cases involves interaction with the EU court. These cases are part of the context of the reform of the Romanian anti-corruption justice system, which has already been the subject of a previous judgment of the Court[34]. This reform has been monitored at the European Union level since 2007, based on the cooperation and verification mechanism established by Decision 2006/928 on Romania's accession to the Union[35]. In these cases, the question arises as to whether the application of the jurisprudence arising from various decisions of the Romanian Constitutional Court on the rules of criminal procedure applicable in fraud and

[33] Cass., ass. plén., 10-10-2001, Breisacher.
[34] Hotărârea din 18 mai 2021, Asociaţia „Forumul Judecătorilor din România” şi alţii, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 şi C-397/19 (a se vedea de asemenea CP nr. 82/21).
[35] Decizia 2006/928/CE a Comisiei din 13 decembrie 2006 de stabilire a unui mecanism de cooperare şi de verificare a progresului realizat de România în vederea atingerii anumitor obiective de referinţă specifice în domeniul reformei sistemului judiciar şi al luptei împotriva corupţiei (JO 2006, L 354, p. 56, Ediţie specială, 11/vol. 51, p. 55).

corruption cases may violate Union law, in particular the provisions of that law aimed at protecting the financial interests of the Union, guaranteeing the independence of judges and the value of the rule of law, as well as the principle of the supremacy of Union law.

Union law shall preclude the application of Constitutional Court jurisprudence leading to the annulment of judgements rendered by illegally constituted panels of judges to the extent that this, in combination with national statutes of limitations, creates a systemic risk of impunity for acts constituting serious offences of fraud affecting the financial interests of the Union or corruption[36].

Union law does not prevent the judgments of the Constitutional Court from being binding on common law courts, provided that the independence of that court, in particular with regard to the legislature and the executive, is guaranteed. Conversely, this right excludes disciplinary liability of national judges for any failure to comply with such judgements.

At the very beginning of integration, when it was necessary to make it clear that integration, which at that time was purely economic, could not do without respect for the fundamental rights of citizens, the Court relied on the cooperation, in the same direction, of the case law of these two courts. And when the CJEU began to create through its case law the primacy of European Union law, i.e. the primacy of EU rule over the rule of states in conflict with it, the two courts quickly followed this construction, always assuming that this primacy did not compromise the protection of fundamental rights, where a national provision would better protect a fundamental right than an EU provision that contradicted it. Experts in European law recall the high contribution made over the years by the decisions of the two courts in Solange I, Maastricht and Lisbon (German Federal Constitutional Court) and Frontini and Granital (Italian Constitutional Court) to the dogmatisation of European law and the relationship between state sovereignty and European integration. which you can easily find on the Internet.

There is currently a crisis in the relationship between legal systems. Is the EU's constitutional architecture strong enough to withstand various jurisdictional earthquakes, such as those that occurred with the BVerfG decision in May 2020 or the Polish Court of Justice decision K3/21? Integration through dialogue has stalled in other countries due to conflicts over overlapping competences introduced by the Lisbon Treaty. However, there

[36] Hotărârea în cauzele conexate C-357/19 Euro Box Promotion şi alţii, C379/19 DNA- Serviciul Teritorial Oradea, C-547/19 Asociaţia « Forumul Judecătorilor din România », C-811/19 FQ şi alţii şi C-840/19 NC URL: https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-12/cp210230ro.pdf

is another way to resolve the overlap: the one proposed by the Italian Constitutional Court. The Consultation was not afraid of challenges and continued to try to find a way that would rely on dialogue as a method.

The Austrian Constitutional Court is another symbol of a very "friendly" orientation with particular reference to community norms[37]: in fact, if its decision is analysed from a substantive point of view, it "accepts the primacy of EU law even over the Constitution"[38]. There are no provisions that regulate in detail the relationship between domestic and community law, although the constitutional law adopted in 1994 for accession aims to guarantee the greatest possible openness and direct influence of community rules. It was only a few years after Austria's accession to the Union that the Court posed the first question for the preliminary ruling and repeated it several times[39]. In this regard, it should also be noted that the court has considered violations of Article 83 of the Constitution (which provides for a pre-established right to a judge) in some cases where another court of last resort failed to address the court by issuing a preliminary ruling. Finally, the ECHR has been incorporated into the legal system as a source at the constitutional level, and thus the Constitutional Court accepts it as a parameter of control of primary acts[40].

The case law of the Supreme Court of Estonia is also open to dialogue. As for the right of the community, it began to cite it even before the country's official accession to the Union[41], and then assumed direct application, achieving in 2005 the promotion of legislative reform to establish a procedure aimed at checking the compliance of domestic rules with European ones. In the first judgment adopted through the use of the new instrument, the Court addressed certain aspects of the relationship between legal systems, confirming the full supremacy of community rules, including over the Constitution. Thus, compliance with EU law is an important condition of application, not just an interpretative tool: "in a substantive sense, this meant a substantial change of the entire Constitution to

[37] C. Elías Méndez, " El modelo constitucional austriaco desde la perspectiva de su interacción con el Derecho de la Unión Europea", Revista de Derecho Constitucional Europeo, núm. 14, Junio-Diciembre de 2010, p. 154.
[38] U. Jedliczka, " The Austrian Constitutional Court and the European Court of Justice " , Journal of International Constitutional Law, vol. 2, núm. 4, 2008, p. 301
[39] M.T. Rörig, " Austria", en P. PASSAGLIA (coord.), Corti costituzionali e rinvio pregiudiziale alla Corte di giustizia, cit., p. 30 y ss., que remite a su vez a las reflexiones de A. POSCH, " Community law and Austrian Constitutional law " , Journal of International Constitutional Law, vol. 2, núm. 4, 2008, p . 27 2 y ss.
[40] G. Martinico, O. Pollicino (eds.), The national judicial treatment of the ECHR and EU laws: a comparative constitutional perspective, cit., sobre todo p. 315.
[41] G. Martinico, O. Pollicino (eds.), The national judicial treatment of the ECHR and EU laws: a comparative constitutional perspective, cit., sobre todo p. 315.

the extent that it was incompatible with European Union law. In order to find out which part of the Constitution is applicable, it must be interpreted in conjunction with the European Union law that became binding on Estonia through the Treaty of Accession". The Court also used the previous question. As for the ECHR, it was also the subject of references before its formal ratification by the state and continues to be so frequently; the Court confirmed its superiority over national legislation, also obliging judges to directly apply the case law of the ECHR.

Similarly to the above, the Dutch High Courts have a very open attitude towards European sources, in a context in which the legal format has also adapted to the new requirements. The preliminary ruling question was often used by these bodies[42] and the principle was enshrined, endowed with a constitutional basis, according to which domestic rules incompatible with Community law or the ECHR should not be directly applied by judges. In the Dutch scenario, this approach was fundamental, as it made it possible to compensate, at least partially, for the lack of constitutional review in the strict sense. At the same time, the subjects refer to the application of supranational norms for their defence, which explains the large number of citations of ECtHR judgments, not only "ad abundantiam".

The first legal systems to be included in this category have a double common characteristic in relation to the relationship with constitutional jurisdiction bodies: The constitutional courts have used questions for preliminary rulings, demonstrating a certain openness, but have indicated the existence of an "identity of intangible constitutional. Cases from Spain, Lithuania and Italy, as well as Ireland and Cyprus, which also have a court with constitutional functions, will be considered; to these will be added cases from the United Kingdom and the Nordic countries.

The Spanish Constitutional Court has confirmed that issues arising from the relationship between community norms and the Constitution are not of constitutional importance[43] (suggesting that the latter, or at least some of them, prevail). Furthermore, he added that these rules are generally not part of the applicable parameter in constitutionality decisions (especially when there is a conflict between the State and the Autonomous Communities on jurisdiction), although a possible opening could be achieved by applying the paragraph contained in Article 10.2. With regard to the actions of ordinary judges, he

[42] G. Martinico, O. Pollicino (eds.), The national judicial treatment of the ECHR and EU laws: a comparative constitutional perspective, cit., sobre todo p. 315.
[43] P. Biglino Campos, "La primacía del derecho comunitario: la perspectiva española", Revista General de Derecho Constitucional, núm. 3, 2007

noted that the failure to issue a preliminary ruling in certain cases could constitute a violation of the right to effective judicial protection, giving rise to an appeal against the amparo[44]. In turn, confirming the positive evolution, it decided to raise the first issue for a preliminary ruling in 2011 on the European Arrest and Surrender Warrant[45]. As regards the ECHR, it is first of all necessary to remember the full application of the aforementioned Article 10.2 CE, which provides for the use of such international standards for interpretative purposes: in fact, the Constitutional Court's jurisprudence also contains direct citations to provisions and judgments of the ECHR. In the period from 1999 to 2007, the Constitutional Court referred to them in 17.5% of its decisions, although a good percentage of these citations are "ad abundantiam"[46].

The Lithuanian Constitutional Court, after a first (short) phase of greater caution, during which European law was used mainly as an interpretative tool, reaffirmed in 2006 its superiority over national norms, but without the principle that it can automatically apply to the Constitution. In the same year, it began to directly quote the Court's judgments, extending the doctrine it had long applied to ECtHR judgments; in 2007, it once again demonstrated its expertise and put the first question for a preliminary ruling before the Court. As expected, the ECHR was explicitly used many times to interpret the rights, even before their formal ratification, and references to ECHR case law were frequent.

Referring to examples of private orders of purely constitutional jurisdiction, the Supreme Court of the United Kingdom (which has taken over the jurisdictional functions of the House of Lords since 2009) also spoke in favour of the extension of European rules, referring to the only issues delegated by the EU[47], and followed the case law of his predecessor by raising preliminary questions before the Court[48]. In addition, in matters relating to rights, especially after the Human Rights Act 1998, the provisions of the ECHR and ECtHR judgments are taken into account. Finally, the highest courts in the Nordic countries (the Danish Supreme Court and the High Courts of Sweden and Finland) also

[44] P.J. Martín Rodríguez, " La cuestión prejudicial como garantía constitucional: a vueltas con la relevancia constitucional del Derecho Comunitario", Revista Española de Derecho Constitucional, núm. 72, 2004, p. 315 y ss.
[45] M. Azpitarte Sánchez, " El Tribunal Constitucional como máximo intérprete de la Constitución Nacional : su relación con el Tribunal de Justicia", en A. CARMONA CONTRERAS (coord.), La Unión Europea en perspectiva constitucional, Aranzadi, Cizur Menor, 2008, p. 185 y ss.
[46] A. Sáiz Arnaiz, La apertura constitucional al derecho internacional y europeo de los derechos humanos: el artículo 10.2 de la Constitución española, Consejo General del Poder Judicial, Madrid, 1999, p. 156 y ss.
[47] T. Groppi, " La «primauté» del Derecho europeo sobre el Derecho constitucional nacional: un punto de vista comparado " , Revista de Derecho Constitucional Europeo, núm. 5, Enero-Junio de 2006, p. 225 y ss.
[48] F.M. Bombillar Sáenz, " El sistema constitucional del Reino Unido", Revista de Derecho Constitucional Europeo, núm. 15, Enero-Junio de 2011.

frequently cite ECtHR and ECHR judgments and resort to submitting questions for preliminary rulings, despite some limitations on the recognition of supremacy over the Constitution[49].

The second group of legal systems could be classified as potentially dialogic, as their constitutional courts have opened up this possibility by explicitly confirming that they are authorised to use the issues of the previous judgment and have used the ECtHR in their interpretive work (Portugal, Slovakia and Poland).

The Constitutional Court of Portugal has effectively declared itself entitled to apply to the Court as a judge of last resort with the obligation to raise preliminary issues and added that acceptance of community standards also implies respect for the institutional mechanisms aimed at ensuring their application. Part of the doctrine was expressed in favour of individualisation of intangible "identity" in the context of European integration. In turn, the ECHR is used as a hermeneutical tool, although initially the level of protection of rights guaranteed by constitutional norms is considered to be at least equal.

Висновки

The progressive development of European constitutional law in the strict sense, i.e. the constitutional law of the European Union, as well as the European development of the constitutional orders of the Member States, including their territorial structures (all European constitutional law in the broad sense), should facilitate productive interaction between constitutional courts. European and national. This may also help to reduce potential conflicts that may arise at the constitutional level.

In a plurality of legal systems, normative conflicts between different legal systems are inevitable. What can be demanded of a legal system is not that there should be no conflicts, but that there should be principles or criteria that allow for the resolution of such conflicts. Currently, these criteria are fully accepted at the infra-constitutional level, so that it can be said that the legal system is functioning properly at this level, meeting the traditional criteria of unity, coherence and completeness.

With the process of integration, despite the fact that the constitutional rule of law is the basic model for building a European constitution, it has entered a crisis as a paradigm for the unitary configuration of the rule of law in pluralistic democracies. The destruction of the principle of unity can only be resolved in accordance with the schemes of the

[49] L. Hansen, O. Wæver, European Integration and National Identity. The Challenge of the Nordic States, Routledge, Londres, 2002.

constitutional rule of law by finally transforming the European order into the original one. It should be borne in mind that we are now in a period of obvious transition, when the European legal order is not yet original, and national legal systems are no longer so. This situation complicates the organisation of the legal system as a whole, which requires that European law cease to be a mere party to a possible conflict and become a global centre of attribution for the entire system. Only in this way will there be a "stronger link" between national constitutional courts and European law, which must necessarily be European constitutional law in its full development. However, this solution is currently not possible due to the distinction between the political preconditions of European integration and its legal formulations. At present, the fundamental norm of the European legal system is not represented by any European Constitution, but by the power of states, which continues to be exercised without prior constitutional restrictions at the European level through supranational consultation mechanisms. The absence of political conditions that make an authentic constitution possible makes us think about the possibility of other paradigms for reconstructing the unity of order. Just as many European states have made a transition from the rule of law to the constitutional rule of law, we are now in a second transition, motivated by the process of European integration. The transition from a constitutional state based on the rule of law to a new form, the outlines of which we do not yet know, but which will be dogmatically formulated through the emerging European constitutional law, faces important challenges.

References

A. Rodríguez, «¿Quién debe ser el defensor de la Constitución española? Comentario a la DTC 1/2004, de 13 de diciembre», Revista de Derecho Constitucional Europeo, nº 3, Enero-Junio de 2005. Dirección electrónica: http://www.ugr.es/~redce/.

A. Sáiz Arnaiz, La apertura constitucional al derecho internacional y europeo de los derechos humanos: el artículo 10.2 de la Constitución española, Consejo General del Poder Judicial, Madrid, 1999, p. 156 y ss.

Article 108, § 4 of the Constitution. URL: https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION_OF_THE_REPUBLIC_OF_KOSOVO.pdf

C. Elías Méndez, " El modelo constitucional austriaco desde la perspectiva de su interacción con el Derecho de la Unión Europea", Revista de Derecho Constitucional Europeo, núm. 14, Junio-Diciembre de 2010, p. 154.

Callejón, F. B. (2010). As relações entre o Tribunal de Justiça da UE e os tribunais constitucionais nacionais dos Estados-Membros. Revista Brasileira De Direitos Fundamentais & Justiça, 4(13), 13–36.

Cass., ass. plén., 10-10-2001, Breisacher.

CDL-AD(2012)001, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, §§57 and 58.

CDL-AD(2013)018, Opinion on the balance of powers in the Constitution and the Legislation of the Principality of Monaco, §86.

CDL-AD(2013)034, Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine, §38

CDL-AD(2018)028, Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement of Malta, §30.

CM/Rec(2010)12, para. 44. See CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges, §27; CDL-AD(2018)028, Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement of Malta, §43.

Council of Europe, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, page 23, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000 16806c323e

Decizia 2006/928/CE a Comisiei din 13 decembrie 2006 de stabilire a unui mecanism de cooperare şi de verificare a progresului realizat de România în vederea atingerii anumitor obiective de referinţă specifice în domeniul reformei sistemului judiciar şi al luptei împotriva corupţiei (JO 2006, L 354, p. 56, Ediţie specială, 11/vol. 51, p. 55).

European Charter on the Status of Judges. Lisbon, 10 July 1998. URL: https://court.gov.ua/userfiles/05.pdf

F.M. Bombillar Sáenz, " El sistema constitucional del Reino Unido", Revista de Derecho Constitucional Europeo, núm. 15, Enero-Junio de 2011.

G. Martinico, O. Pollicino (eds.), The national judicial treatment of the ECHR and EU laws: a comparative constitutional perspective, cit., sobre todo p. 315.

Georges Vedel, « Réflexions sur les singularités de la procédure devant le Conseil constitutionnel », Nouveaux Juges, Nouveaux Pouvoirs ?, Mélanges en l'honneur de Roger Perrot, Dalloz, 1996, p. 537

Hotărârea din 18 mai 2021, Asociaţia „Forumul Judecătorilor din România" şi alţii, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 şi C-397/19 (a se vedea de asemenea CP nr. 82/21).

Hotărârea în cauzele conexate C-357/19 Euro Box Promotion şi alţii, C379/19 DNA-Serviciul Teritorial Oradea, C-547/19 Asociaţia « Forumul Judecătorilor din România », C-811/19 FQ şi alţii şi C-840/19 NC URL: https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-12/cp210230ro.pdf

L. Hansen, O. Wæver, European Integration and National Identity. The Challenge of the Nordic States, Routledge, Londres, 2002.

M. Azpitarte Sánchez, " El Tribunal Constitucional como máximo intérprete de la Constitución Nacional : su relación con el Tribunal de Justicia", en A. CARMONA CONTRERAS (coord.), La Unión Europea en perspectiva constitucional, Aranzadi, Cizur Menor, 2008, p. 185 y ss.

M.T. Rörig, " Austria", en P. PASSAGLIA (coord.), Corti costituzionali e rinvio pregiudiziale alla Corte di giustizia, cit., p. 30 y ss., que remite a su vez a las reflexiones de A. POSCH, " Community law and Austrian Constitutional law " , Journal of International Constitutional Law, vol. 2, núm. 4, 2008, p . 27 2 y ss.

Malleson, K., 'Introduction', in K. Malleson and P. H. Russell (eds), Appointing Judges in an Age of Judicial Power: Critical Perspectives from Around the World (Toronto/Buffalo, NY/London: University of Toronto Press, 2006) 6.

Matthieu Febvre-Issaly «Un dialogue constitutionnel? La circulation d'une métaphore et quelques réalités juridiques contemporaines », Jus Politicum, n° 27 URL: http://juspoliticum.com/article/Un-dialogue-constitutionnel-La-circulation-d-une-metaphore-et-quelques-realites-juridiques-contemporaines-1453.html

NOU 2020: 11, section 11.5, page 111, https://www.regjeringen.no/contentassets/367acaf16a2941bfaf5e3b1ae7bfe95f/no/pdfs/nou20202020 0011000dddpdfs.pdf

Ot. Prp. Nr. 102, section 3.3, page 15, https://www.regjeringen.no/contentassets/2027ea6191c54bbdb5aca090124f660a/nnno/pdfs/otp200820090102000dddpdfs.pdf

P. Biglino Campos, "La primacía del derecho comunitario: la perspectiva española", Revista General de Derecho Constitucional, núm. 3, 2007

P.J. Martín Rodríguez, " La cuestión prejudicial como garantía constitucional: a vueltas con la relevancia constitucional del Derecho Comunitario", Revista Española de Derecho Constitucional, núm. 72, 2004, p. 315 y ss.

Pascal Jan, « Le Conseil constitutionnel », La Nouvelle Ve République, Pouvoirs, n° 99, 2001, p. 74. Sur les relations de cause à effet entre décision du Conseil constitutionnel et révision constitutionnelle, voir Louis Favoreu, « Le Parlement constituant et le juge constitutionnel », Mélanges Pierre Avril. La République, Montchrestien, 2001, p. 235.

Retsplejeloven §43

See, in this sense, Robert Badinter, interview in Les Quarante Ans de la Fifth République, RDP, 1998, p. 1336. Of course, one can object that this is to bind France's position in the community negotiation in advance, but this would be for the benefit of the legal model that our law conveys. It is well worth another which is too often imposed on us by community texts.

Shcherbaniuk O.V., Bzova L.G. Reforming the Procedure for Selecting Judges of the Constitutional Court of Ukraine as a Condition for Integration into the European Union: Contextual and Conceptual Considerations. Law of Ukraine. 2023. № 7. C. 12-23.

Simona Farkašová. Constitutional aspects of the current reform of the selecting constitutional judges in the Slovak Republic and the comparative perspectives in Europe. Juridical Tribune Volume 11, Issue 2, June 2021 p.150-173.

T. Groppi, " La «primauté» del Derecho europeo sobre el Derecho constitucional nacional: un punto de vista comparado " , Revista de Derecho Constitucional Europeo, núm. 5, Enero-Junio de 2006, p. 225 y ss.

U. Jedliczka, " The Austrian Constitutional Court and the European Court of Justice " , Journal of International Constitutional Law, vol. 2, núm. 4, 2008, p. 301.